

Petitioner respectfully requests that this Court grant review and consider the issue in this case.

**I. THE FOURTH AMENDMENT DOES NOT PERMIT A SUSPICIONLESS PAROLE SEARCH.**

As to whether a parole search can be initiated only upon individualized suspicion of criminal wrongdoing, the California Supreme Court has offered an answer in the absence of a ruling from this Court. In *People v. Reyes*, 19 Cal.4th 743 (1998), the majority held that no individualized or particularized suspicion is required before a parole agent searches his parolee's residence for drugs. *People v. Reyes, supra*, 4 Cal.4th at 753. Instead, Fourth Amendment protects parolees only from searches that are "arbitrary and capricious" according to the California Supreme Court's analysis. *Id.* at 753-754. A search that is arbitrary and capricious is motivated by illegitimate purpose, such as personal animosity. *In re Anthony S.*, 4 Cal.App.4th 1000, 1004 (1992), cited with approval in *People v. Reyes, supra*, 4 Cal.4th at 754.

Following the *Reyes* decision came *United States v. Knights* (2001) 534 U.S. 112, in which this Court held that reasonable suspicion, rather than probable cause, was sufficient to support the search of a probationer's home for "investigatory" rather than "probationary" purposes. (*United States v. Knights, supra*, 534 U.S. at p. 120, fn. 6.) This Court declined to decide the broader issue of whether a parole search for investigatory or probationary purposes performed *absent any individualized suspicion* would satisfy the reasonableness requirement of the Fourth Amendment. (*Ibid.*).

As explained by Justice Kennard dissenting in *Reyes, supra*, this Court "has never held that the Fourth Amendment to the federal Constitution permits warrantless, nonconsensual government searches of private residences without at least reasonable suspicion." (*People v. Reyes, supra*, 19 Cal.4th at 759; *see, also, United States v. Giannetta*, 909 F.2d 571, 576 (1<sup>st</sup> Cir.1990), relying on *Griffin v. Wisconsin*, 483 U.S. 868 (1987) [search must be reasonable where conducted pursuant to signed waiver allowing search "with or without reasonable suspicion"]. Justice Kennard did not further comment on the extent to which Fourth

Amendment protections must extend to searches outside the residence.

Davalos contends that the federal Constitution requires at least some individualized suspicion of criminal wrongdoing before a parole search may be conducted. Reasonable suspicion should be the *minimum* level of Fourth Amendment constitutional protection. (*People v. Reyes, supra*, 19 Cal.4th at 759.) Davalos urges this Court to accept review and reverse the California Supreme Court's decision in *Reyes*.

Here, Deputy Meixner performed a parole search when Davalos, a parolee, was discovered to be riding in a car subject to a traffic stop for expired tags. There was no individualized suspicion that Davalos had committed or was in the process of committing a criminal act or violating parole. Under the circumstances, Davalos was searched for no particular reason whatsoever. He was searched simply because the opportunity arose during a routine traffic stop for a citable traffic violation. Such grounds for search, even if a parolee has waived his Fourth Amendment rights as required by statute, fails to satisfy federal

constitutional scrutiny under Ninth Circuit case law and the United States Supreme Court's decision in *Griffith, supra*, 483 U.S. at p. 873-880.)

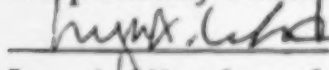
Therefore, the parole search violated the Fourth Amendment and the suppression motion should have been granted.

## II. CONCLUSION.

Davalos respectfully requests this Court to grant his petition for writ of certiorari, review his case for violation of the Fourth Amendment of the United States Constitution, and reverse the state court's holding.

Dated: November 11, 2005

Respectfully submitted,



Lyn A. Woodward

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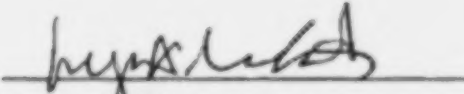
*Attorney of Record for Petitioner*

## CERTIFICATE OF COMPLIANCE

This original brief is presented in proportionately-spaced 12.5 point Roman font (Book Antique). The lines are spaced at least 2 points from one another. There are no footnotes. Quotes greater than 50 words in length are indented. The word count for this brief is 1,524 words, 8,372 characters (without spaces) not including the tables.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of November 2005 at Pacific Grove, California.

  
Lyn A. Woodward

**Court of Appeal, Second Appellate District,  
Division Six - No. B175098**

**S135479**

**IN THE SUPREME COURT OF  
CALIFORNIA.**

**En Banc**

---

**THE PEOPLE, Plaintiff and Respondent**

**v.**

**RALPH DAVALOS, Defendant and  
Appellant**

---

**Petition for Review DENIED.**

**Werdegarr, J., was absent and did not  
participate.**

**SUPREME COURT**

**FILED**

**AUG 17 2005**

**Frederick K. Ohlrich Clerk**

**George**

---

**Deputy**

**Chief Justice**

**Appendix A - Page 1 of 1**

Superior Court of the State of California, County of Ventura

MINUTE ORDER REPORT

Case Number 2003034549 F A People v. Davalos, Ralph Manuel  
93 days from first appearance

Name: Davalos, Ralph Manuel Courtroom 45 For 01/22/04 03:00 PM  
Case #: 20030000034549 F A Atty Name: Martha Wolter PD

Case Status: Open Mand. App. Yes  
Release Status: Remanded  
Charging Documents: Information Bail Set Amt.: \$35,000 Last Date  
for Trial: 02/04/04

Violations

Cnt S/A Off Lvl Plea Dt Plea Disposition Dt Dispo Bail Schedule

1 F 12020(a) PC1350(a) Not Guilty 11/17/03 \$20,000.00

10/18/03 Carrying A Dirk And Dagger

1 F 667S2 PC Denied 11/17/03 \$10,000.00

10/18/03 S/A - Prior - Strike 2

2 F 667.5(b) PC Denied 11/17/03 \$10,000.00

11/17/99 S/A - Prior - Prior Any Felony

<u>Fiscal</u>		
Component	Due	Balance
Fees	\$25.00	\$25.00
Case total:	\$25.00	\$25.00

Superior Court of the State of California, County of Ventura

MINUTE ORDER REPORT

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for Trial: 02/04/04

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<u>Docket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
01/22/2004	1	HHELD	<u>Jury trial and 1538.5</u> <u>Motion heard in Courtroom 14 on Jan. 22 2004 at 01:30PM</u>
	2	OFJUD	Judge Curtis, Hebert III
	3	OFJA	Judicial Assistant—
Balam, Evelyn K.	4	OFREP	Court Reporter, De La O,
Katheryn is present.	5	PP	The defendant is present
in court.	6	PPD	Public Defender marty
Wolter is present.	7	PPDA	Deputy District Attorney
Tom Frye present.	8	CLASG	Case assigned to
Courtroom 45 for 1538.5 Motion to begin 1/22/04 at 3:00 PM.	9	FCFREE	and possible plea.
	10	BLCURS	Defendant is remanded
go the custody of the Sheriff's Office. Bail remains as currently set.			



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for Trial: 02/04/04

<u>Docket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
	11	BLOTA	The court orders you to appear.
	13	HHELD	<u>1538.5 PC Motion Head</u>
			<u>in Courtroom 45 on Jan. 22 2004 at 3.00 PM.</u>
	14	OFJUD	Judge McGee, Kevin J.
	15	OFJA	Judicial Assistant—
Perez, Angelina G.	16	OFREP	Court reporter – Casual,
Stephanie R. is present.	17	PP	The defendant is present in court.
	19	ATLCLK	Certified Law
ClrkTiberini is present; supervised bu Tom Frye.	20	PPD	Public Defender Martha Wolter is present in court.
	21	TRTIM	At 03:28 AM.
	22	FCFREE	Defense counsel request to conference before starting on the 1538.5 motion.
	23	FCFREE	Counsel and court confer in chambers
	24	TRTIM	At 03:35 PM.
	25	MOCMI	The court is in session, all the parties are present, the 1538.5 pC motion commences.

## MINUTE ORDER REPORT

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Name: Davalos, Ralph Manuel Courtroom 45 For 01/22/04 03:00 PM  
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Case Status: Open Mand. App. Yes  
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for Trial: 02/04/04

<u>Socket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
	26	MOB1538	Basis for 1538.5 PC
motion is illegal search.	27	FCSTIP1	The parties stipulate: no
warrants.	28	TRPEOP	For the People:
	29	TRWIT	People witness Deputy
Merixner is sworn and testifies.	30	TRWID	The witness identified
defendant.	31	TRCROSS	Cross-Examination of the
witness commences.	32	TRDRT	Re-Direct examination of
the witness commences.	33	TRRCROS	Re-Cross examination of
the witness commences.	34	TRSTIP	Stipulation by all parties
re: at the time of the stop defendant was on parole with search terms.	35	TRREST	People rest.
	36	PTNOE	No defense evidence
presented.	37	TRARGU	Argument by the defense.
	38	TRARGU	Argument by the People
	39	MO1538	1538.5 motion is denied.

## MINUTE ORDER REPORT

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Case Number 2003034549 F A People v. Davalos, Ralph Manuel  
93 days from first appearance

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Case #: 20030000034549 F A Atty Name: Martha Wolter PD

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Charging Documents: Information Bail Set Amt: \$35,000 Last Date  
for Trial: 02/04/04

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<u>Docket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
	40	CLCONT	Case continued to
01/26/04 at 8:30 AM in Courtroom 14 for JURY TRIAL.			
	41	BLOTA	The court orders you to
appear.			
	42	BLCURS	Defendant is remanded to
the custody of the Sheriff's Office. Bail remains as previously set.			

**NOT TO BE PUBLISHED IN THE OFFICIAL  
REPORTS**

**IN THE COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
DIVISION SIX**

THE PEOPLE,

Defendant and Respondent,

RALPH MANUEL DAVALOS,

Appellant and Appellant.

| 2d. Crim. No. B175098

| Super. Ct. No. 2003034549)

| (Ventura County)

|

**COURT OF APPEAL - SECOND DIST.**

**FILED**

**MAY 31, 2005**

**JOSEPH A. LANE, Clerk**

**Deputy Clerk**

Ralph Manuel Davalos appeals a judgment  
after his no contest plea to carrying a dirk or dagger  
Pen. Code § 12020, subd. (a)), and the denial of his

Appendix C - Page 1 of 6

motion to suppress (Pen. Code § 1538.5). We conclude that the police did not need reasonable suspicion to conduct a parole search of Davalos. We affirm. FACTS

Deputy Sheriff William Meixner stopped a car because it crossed "over the limit line" and had expired registration tags. He approached the passenger side where Davalos was sitting. He recognized Davalos "from prior contacts" and knew he had been on parole. Meixner smelled the "odor of alcohol in the car" and knew Davalos had "alcohol terms as part of his parole." He searched Davalos and found a long knife in the front pocket of his shorts. Davalos moved to suppress the evidence of the knife, claiming the search violated his Fourth Amendment rights.

## DISCUSSION

### 1. Parole Search Without Reasonable Suspicion

Davalos contends that under the Fourth Amendment police officers must have reasonable

suspicion to conduct a parole search. We disagree.

Our Supreme Court has rejected this contention. In *People v. Reyes* (1998) 19 Cal.4<sup>th</sup> 743, the Court held that "a parole search may be reasonable despite the absence of particularized suspicion." (*Id.* at p. 753.) It said, "Because of society's interest both in assuring the parolee corrects his behavior and in protecting its citizens against dangerous criminals, a search pursuant to a parole condition, without reasonable suspicion, does not 'intrude on a reasonable expectation of privacy....' [Citation]" (*Id.* at p. 751.) Such searches, however, may not be oppressive or conducted in an unreasonable manner. (*Id.* at p. 753.)

Davalos contends that *Reyes* is in conflict with *United States v. Knights* (2001) 534 U.S. 112. We disagree. In *Knights*, the United States Supreme Court held that a warrantless search of a probationer's apartment "supported by reasonable suspicion and authorized by a condition of

probation, was reasonable within the meaning of the Fourth Amendment." (*Id.* at p. 122.) *Knights* did not decide whether probation search "without any individualized suspicion would have satisfied the reasonableness requirement of the Fourth Amendment." (*Id.* at p. 120, fn. 6.) It noted, "The terms of the probation condition permit such a search, but we need not address the constitutionality of a suspicionless search because the search in this case was supported by reasonable suspicion." (*Ibid.*" After *Knights*, the California Supreme Court in *People v. Sanders* (2003) 31 Cal.4<sup>th</sup> 318, 333, reiterated that parole searches may be conducted "in the absence of a particularized suspicion of criminal activity...."

Davalos contends the Ninth Circuit would reach a different conclusion than the California Supreme Court. But the ninth Circuit en banc recently held that compelling federal parolees to submit DNA profiling in the absence of individualized suspicion does not violate the

Fourth Amendment. (*U.S. v. Kincaid* (9<sup>th</sup> Cir. 2004) 379 F.3d 813, 816, 835.) It said, parolees....are not entitled to the full panoply of rights and protections possessed by the general public." (*Id.* at p. 833.) They "enjoy severely constricted expectations of privacy...." (*Id.* at 834.) Kincaid is consistent with *Reyes*.

But even if the Ninth Circuit disagrees with *Reyes*, the result does not change. "[A]lthough we are bound by decisions of the United States Supreme Court interpreting the federal Constitution [citations], we are not bound by the decisions of the lower federal courts...." (*People v. Bradley* (1969) 1 Cal.3d 80, 86.) We are, however, bound by California Supreme Court decisions. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 455.) Davalos has not shown that the search was conducted in an unreasonable manner. There was no error.

The judgment is affirmed.



NOT TO BE PUBLISHED.

Gilbert, P.J.

We concur:

COFFEE, J.

PERREN, J.

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~~OFFICE OF THE CLERK~~  
SUPREME COURT, U.S.  
IN THE SUPREME COURT OF THE UNITED STATES

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RALPH DAVALOS, *Petitioner,*

v.

STATE OF CALIFORNIA, *Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
CALIFORNIA SUPREME COURT

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Chief Assistant Attorney General  
MANUEL M. MEDEIROS  
State Solicitor General  
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Counsel for Respondent

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## QUESTIONS PRESENTED

1. Does the Fourth Amendment permit the suspicionless search of a parolee to determine whether he or she is complying with the conditions of his or her parole?

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**IN THE SUPREME COURT OF THE UNITED STATES**No. 05-646

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RALPH DAVALOS, *Petitioner*,

v.

STATE OF CALIFORNIA, *Respondent*.

---

**OPINION BELOW**

The opinion of the California Court of Appeal was not published in the official reports and is attached to the Petition of Writ of Certiorari ("Petition" or "Pet."). (Pet. App. C.) The order of the California Supreme Court denying review is also unreported. (Pet. App. A.)

**STATEMENT OF JURISDICTION**

The unpublished decision of the California Court of Appeal issued on May 31, 2005. (Pet. App. C.) The California Supreme Court denied petitioner's petition for review on August 17, 2005. (Pet. App. A.) The Petition was filed in this Court on November 14, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

**STATEMENT OF THE CASE**

On July 31, 1997, petitioner was convicted of first degree burglary and served a prison term. (CT at 53.)<sup>1</sup> Pursuant to

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1. "CT" refers to the Clerk's Transcript prepared in connection with petitioner's direct appeal to the California Court of Appeal. "RT" refers to the Reporters' Transcript prepared for the same appeal.

California law, Cal. Penal Code § 3067(a), and prior to his release on parole, petitioner agreed in writing to be subject to search or seizure by a parole officer or other peace officer at any time, with or without a search warrant and with or without cause. (RT at 14-15.)

On October 18, 2003, around 11:00 p.m., Ventura County Sheriff's Deputy William Meixner and his partner, Deputy Wiggins, were patrolling Main Street in Piru, when they noticed a vehicle with expired registration tags. The vehicle also failed to make a stop before the limit line at an intersection. (CT at 89-90; RT at 6.) The deputies stopped the vehicle for these violations. During the traffic stop, Deputy Meixner approached the passenger side of the car and recognized petitioner as a parolee from prior contacts. Deputy Meixner asked petitioner if he was still on parole, and petitioner confirmed that he was. The deputy knew that, at the time, petitioner was subject to search as part of his parole terms. Deputy Meixner asked petitioner to get out of the car and walk to the patrol car, where the deputy searched petitioner. (CT at 90; RT at 6-7, 11-12.) In the front left pocket of petitioner's shorts, the deputy found a knife with a five-inch blade. (CT at 91; RT at 8.) Petitioner was cooperative during the encounter. (CT at 97.)

The Ventura County District Attorney charged petitioner with carrying a dirk or dagger in violation of California Penal Code section 12020(a). It was also alleged that petitioner had a prior conviction within the meaning of California's Three Strikes Law, Cal. Penal Code § 1170.12, and had served a prior prison term within the meaning of California Penal Code section 667.5(b). (CT at 2.) Petitioner pled not guilty and denied the special allegations. (CT at 3-4.) The trial court denied petitioner's suppression motion, finding that Deputy Meixner reasonably searched petitioner pursuant to his parole search terms. (CT at 46; RT at 22.) As a result, petitioner withdrew his prior plea and pled guilty to the sole charge. He also admitted his prior conviction and prison term. (CT at 53-69; RT at 28.) Petitioner was placed on formal probation for 36 months. (CT at 83.)

Petitioner appealed the trial court's suppression ruling. (CT at 85.) Following precedent of the California Supreme Court, the California Court of Appeal affirmed the trial court's ruling. The court found that the Fourth Amendment did not bar Deputy Meixner from conducting a suspicionless parole search and that the search was not oppressive or conducted in an unreasonable manner. (Pet. App.

C at 2-5.) The California Supreme Court declined review in this case. (Pet. App. A at 1.)

## **REASONS WHY THE WRIT SHOULD BE DENIED**

### **I.**

#### **CERTIORARI SHOULD BE DENIED BECAUSE THE INSTANT ISSUE IS ALREADY UNDER CONSIDERATION IN ANOTHER CASE**

Petitioner asks this Court to grant certiorari in this case to review its holding, in light of the California Supreme Court's decision in *People v. Reyes*, 19 Cal. 4th 743, 968 P.2d 445, 80 Cal. Rptr. 2d 734 (1998), that, as long as the searches are not arbitrary or capricious, the Fourth Amendment permits parole searches without any individualized suspicion of criminal wrongdoing. According to petitioner, the state court's ruling is inconsistent with the requirements of the Fourth Amendment. He maintains that "reasonable suspicion" should be the minimum level of constitutional protection in this context. Petitioner further notes that, in *United States v. Knights*, 534 U.S. 112 (2001), this Court left open the instant question about the propriety of suspicionless parole searches. (Pet. 6-7.)

Respondent notes that, on September 27, 2005, this Court granted certiorari in the case of *Samson v. California*, 04-9728, to review the following question: Does the Fourth Amendment prohibit police from conducting a warrantless search of a person who is subject to a parole search condition, where there is no suspicion of criminal wrongdoing and the sole reason for the search is that the person is on parole?<sup>2</sup> In *Samson*, a police officer contacted the defendant on a public street and later searched him after determining the defendant was on parole. The officer found methamphetamine in the defendant's possession. At the time of the search, the defendant was on parole and subject to a search condition, under which he agreed to be searched by a parole officer or other peace officer at any time, with or without a search warrant and with or without cause. As

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2. Respondent respectfully asks this Court to take judicial notice of its own case file in *Samson v. California*. See Fed. R. Evid. 201.

in the instant case, the California Court of Appeal, relying on *Reyes*, rejected the defendant's position that the suspicionless search of a parolee violates the Fourth Amendment and found the search was not arbitrary, capricious, or conducted for the purpose of harassment, in violation of California law.

This case, like *Samson*, presents a Fourth Amendment challenge to suspicionless searches of parolees in California. It is therefore likely that this Court's opinion in *Samson* will govern this case. Also, the opinion of the state appellate court in this case was not published and, consequently, lacks precedential value. See Cal. R. Ct. 977(a). Thus, there is no need to grant certiorari here to consider this issue again. This Court, of course, might defer ruling on the Petition until *Samson* is decided. See, e.g., *Keney v. New York*, 388 U.S. 440 (1967).

## II.

### **CERTIORARI SHOULD BE DENIED BECAUSE THERE WAS NO FOURTH AMENDMENT VIOLATION IN THIS CASE**

As previously noted, this Court has granted certiorari in *Samson* to decide the very same issue raised in the instant case. In *Samson*, respondent has already filed a brief on the merits setting forth in great detail respondent's position that the Fourth Amendment does not bar suspicionless parole searches. Below, respondent provides a summary of the arguments already presented to this Court in *Samson*. Ultimately, as argued in *Samson* and in this case, the instant parole search was not contrary to the Fourth Amendment, and consequently, petitioner is not entitled to certiorari or any other relief.

#### **A. Under The Totality Of The Circumstances, The California Parole Search Condition Is Reasonable Under The Fourth Amendment**

Under this Court's totality-of-the-circumstances jurisprudence, the California parole search condition is reasonable under the Fourth Amendment. In this context, "the reasonableness of a search is determined 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.'" *Knights*, 534 U.S. at 118-19. This Court must then "balance the privacy-related and law enforcement-related concerns